

REMARKS

This is responsive to the outstanding Office Action issued July 30, 2002. Claims 1-12, 14-16 and 18-49 were pending in the application. All claims were rejected. Applicant believes that application is in a condition for allowance. Applicant respectfully requests notice to that effect.

The Examiner requested information regarding any past or present litigation which may be material to the prosecution of the RCE. There was a past lawsuit, but nothing from that suit is known or believed to be material to the examination of the RCE.

The oath was objected to as failing to identify at least one error which is relied upon to support the reissue application. Applicant traverses noting that this particular objection is raised every time a claim is altered, regardless of whether such change is to correct an error already covered under the present oath or not. All errors being corrected are believed to be covered under the present oath and no bona fide assertion has been made otherwise. To resolve the conflict, Applicant will submit a supplemental oath in accordance with 37 CFR §1.175(b)(1)(a)(i) prior to Allowance under protest.

Applicant respectfully requests either identification of all the new errors, e.g., a complete explanation of the objection, or acceptance of the proposed compromise.

Claims 1-12, 14-16, and 18-49 were rejected under 35 U.S.C. §251 for the reasons the oath was rejected. For the reasons set forth in the immediate preceding paragraph, this rejection is inappropriate. A compromise has been offered, under

protest, that would overcome the rejection pursuant to 37 CFR §1.175(b)(1)(a)(ii).

Applicant respectfully requests notice to that effect.

Claims 18 and 41 were rejected under 35 U.S.C. §112 as containing subject matter not disclosed in the original patent. Specifically, the Examiner asserts that the patent does not disclose means for locking or unlocking or the step of locking or unlocking fasteners. Applicant has amended such language, noting column 2, lines 5-10. Applicant believes the rejection has been overcome and should be withdrawn. Applicant respectfully requests notice to that effect.

Claims 5-7, 9-12, 14, 15, 18-20, 22, 24-29, 31-38, 40-42, 44, 47 and 48 were rejected under 35 U.S.C. §102 as being anticipated by Dearing. Claims 5 and 28 have been amended to more positively claim dirty water as an element of the claim. All other claims depend from claims 5 and 28. Per the Examiner interview the claims are combination claims. The term "pond" is not intended to restrict the interpretation to any particular type of container.

The Examiner has raised the issue of whether Dearing teaches or suggests dirty water. This was formally raised upon the initial filing in claim 28 as a minimum and should already have been addressed, **making a final office action on the basis of a new issue improper**. That is, the step of disposing the cover over dirty water cannot occur without dirty water, making the term dirty water positively recited. Dearing is a swimming pool cover, but does include an unexplained statement of "or other liquids." The question is whether a reference teaching a cover for a swimming pool, clean water, with the term "or other liquids", teaches or suggests to one skilled in the art that the

cover was good for use with sewage. Applicant asserts that “or other liquids” would teach or suggest to one skilled in the art other liquid chemicals used in swimming pools such a chlorine, but not sewage or other dirty water.

Applicant already provided the declaration of Claude G. Degarie, who states at paragraph 16 et seq.: “It is further my opinion that people working on the development of “dirty water” systems would not look to patents or publications concerning “clean water” systems for a solution to their problems. The problems faced by the designers of the two types of systems are completely different....” He goes on to explain that they even have their own trade organizations, governing authorities, accreditation, testing standards, manuals and the like. “The two [fields] are mutually exclusive.”

This declaration and the patent office position based upon the declaration should be followed absent clear and convincing evidence that the declaration is false and there is clear and convincing evidence that the patent office’s prior decision was wrong. Having been reviewed and deemed controlling and persuasive in the first instance, the doctrine of equal protection under the laws, precludes an alternative impact at this time. That is, to reject the declaration at this time, invalidates the patent that was issued based upon the affidavit or alternatively creates multiple classes of patent applicants, some of which are given protection under the laws and others that are refused protection. Neither solution would be reasonable or acceptable absent a legitimate basis for invalidating the prior patent. Patent office policy of “broadest reasonable interpretation” must still be reasonable and unconstitutional interpretations are not reasonable.

Applicant therefore asserts that the rejection has been/already was overcome and should be withdrawn. Applicant respectfully requests notice to that effect.

Claims 5-7, 9, 10, 12, 14-16, 18, 19, 23, 25, 26, 28, 29, 31-33, 35-39, 41, 42, 46, and 48 were rejected under 35 U.S.C. §102(b) as being anticipated by Walker. For the reasons asserted with regard to the 102 rejection based on Dearing, the claims are allowable over Walker as well. Applicant therefore asserts that the rejection has been/already was overcome and should be withdrawn. Applicant respectfully requests notice to that effect.

Claims 8, 21, 30 and 43 were rejected under 35 U.S.C. §103 as being unpatentable over Dearing. Such claims depend from claims 5 and 28 which are patentable over Dearing. Applicant therefore asserts that the rejection has been/already was overcome and should be withdrawn. Applicant respectfully requests notice to that effect.

Claims [not specified] were rejected under 35 U.S.C. §103 as being unpatentable over Walker. The claims depend from independent claims 1, 5, or 28 which for the aforementioned reasons are allowable over Walker. Applicant therefore asserts that the rejection has been/already was overcome and should be withdrawn. Applicant respectfully requests notice to that effect.


CONCLUSION

It is respectfully submitted that, with the present amendments to the claims, oath and drawings, and in light of the above remarks, all of the presently pending claims

should be seen to be fully supported by the present specification and to define an invention patentable over all of the art of record, whether taken separately or in any combination. The prompt issuance of a formal Notice of Allowance is seen to be in order and is solicited to be forthcoming.

Should the Examiner be of the opinion that any minor matters remain to be settled prior to the issuance of a Notice of Allowance, a telephone call to the undersigned attorney of record is respectfully invited to assure prompt resolution thereof. Counsel may be reached at: **(763) 560-0294**

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